

REMARKS

Applicant would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and amended as necessary to more clearly and particularly describe the subject matter which applicant regards as the invention.

Claims 1 and 3-14 remain in the application. Claim 2 has been cancelled.

Claim 1 stands rejected under 35 USC 103(a) as being unpatentable over U.S. Patent 5,745,565 to Wakefield (hereinafter Wakefield '565) in view of U.S. Patent D460962 to Peiker (hereinafter Peiker '962). For the following reasons the Examiner's rejections are traversed.

The present invention is directed to a phone holder assembly including an outer member and an inner member, each of which are adapted to receive phones of a different size. The bottom wall and front wall define a slotted opening to permit a power cord to extend upwardly to a mobile telephone received within the outer member or inner member and to permit a front face or display of the mobile telephone to be visible when the mobile telephone is received in the holding assembly. The phone holder assembly is attachable to a panel on the center console of a vehicle. The phone received within the holder assembly is stored in a generally vertical position and does not significantly infringe upon the storage space of the center console. The phone is accessible by the user by simply folding the front panel assembly downwardly.

Wakefield '565 discloses a combination cup and cellular phone holder.

Connected to and integral with a beverage or cup holder is a cellular phone or portable

communication unit holder connected by a bridging member, all of which may be cast in an integral form of a suitable material such as a thermoplastic rubber. A foam rubber cushion may be provided in the bottom of the beverage holder and may include a slot for receiving the bottom of a cellular phone in those situations where the cellular phone is inserted into the beverage holder. A tapered insert may be positioned into the interior of the cup holder proximate to the bottom of the cup holder and secured to a weighted bottom member.

Peiker '962 discloses an ornamental holder for a cellular telephone having a partially open front and top section.

There is no motivation or suggestion in the art of record to combine the Wakefield '565 and Peiker '962 references in the manner proposed by the Examiner. Claim 1 includes an open topped inner member that is slidably received within an open topped outer member. Both the inner and outer members include a front wall that has an elongated opening therethrough. Only Figure 5 in Wakefield '565 shows an embodiment of the Wakefield '565 device 10 with an outer 2 and inner member 60. Unlike the device of Peiker '962 that simply holds a phone, Wakefield '565 teaches a dual function device, configured to hold first, a beverage container or alternately, a removable inner member that secures a cellphone. To provide the outer member of Wakefield '565 with the open face disclosed by Peiker '962 would severely limit its dual function capabilities. Providing any opening in the face of the outer member 2 of Wakefield '565, creates instability when functioning as a beverage holder. The opening would allow for a beverage container to be inserted in a crooked manner or would not provide the necessary support for more structurally weak containers such as paper and

plastic cups. There is simply no reason for one having ordinary skill in the art to modify a device in such a way that would detrimentally affect one of the device's primary functions. Thus, the combination of Wakefield '565 and Peiker '962 is improper.

Additionally, Wakefield '565 does not specifically disclose outer and inner members adapted to receive phones of different sizes. Only one size of phone is shown in the Wakefield '565 patent. Additionally, Peiker '962 does not teach a device adapted to receive phones of different sizes. Peiker '962 only teaches an open front on the item holding the phone. Peiker '962 cannot be interpreted as teaching an opening in both inner and outer members, as it comprises only a single element. Thus, even if the references were combined in the manner proposed by the Examiner, the present invention would not result. Accordingly, reconsideration and withdrawal of the rejection of claim 1 is requested.

Claims 3-4 stand rejected under 35 USC 103(a) as being unpatentable over Wakefield '565 in view of Peiker '962 and further in view of U.S. patent 6,263,080 to Klammer et al (hereinafter Klammer '080). The Examiner's rejection is traversed for the following reasons.

Klammer '080 discloses a holding device for the clamping accommodation of a telephone unit. The unitary holding device is narrow and includes a slotted bottom for the passage of a power cord.

Regarding claim 3, as previously stated, there is no motivation in the art to combine the Wakefield '565 and Peiker '962 references. Additionally, there is no motivation in the art to combine the Wakefield '565 and Klammer '080 references in the manner proposed by the Examiner. The Wakefield '565 patent is directed toward a

combination cup holder and phone holder. The Wakefield '565 assembly is completely passive, and thus has no moving parts. Moreover, the Wakefield '565 assembly is adapted to hold a phone such that the phone is exposed and accessible. On the other hand, the Klammer '080 patent teaches a cradle for releasably receiving a corded phone. One skilled in the art, when trying to improve upon the Wakefield '565 design, would not look to movable assemblies dedicated to a single size phone, such as Klammer '080. It is clear that the present application provides the only motivation for the proposed combination of references and, as such, the rejection of claims 3 and 4 is invalid for hindsight and should be withdrawn.

Further, even if the references were combined in the manner proposed by the Examiner, the present invention would not result. None of the references, alone or in combination, teach both an inner and outer member that include a bottom wall with an opening therein as required. Additionally, specifically with regard to claim 4, neither reference teaches that the inner member has ears that "snap fit through openings in the outer member", as required. The ridges 64 of Wakefield '565 are not received in openings.

Claims 5-6 stand rejected under 35 USC 103(a) as being unpatentable over the combination of Wakefield '565, Peiker '962 and Klammer '080 in further view of U.S. Patent 6,543,637 to Osborn (hereinafter Osborn '637). For the following reasons, the Examiner's rejections are traversed.

Osborn '637 discloses an adapter for adapting a conventional cup holder to hold a wide arrange of containers. The adapter provides for a removable insert 12 which can be used to further adapt the adapter to accommodate various container sizes. The

lower body portion 18 of the insert 12 may include one or more elongate slots 26 which extend upwardly from lower edge 24 so as to form a compressible body portion. A rib 28 may extend along the free edges of elongate slots 26 to reinforce the cylindrical wall 22. Adapter 14 also may optionally include elongate slots 56 which extend upwardly from a lower edge 54 to form a compressible lower body portion 50.

As previously stated, there is no motivation to combine the Wakefield '565 and Peiker '962 references. Further, it is submitted that there is no motivation or suggestion to combine the Wakefield '565, Peiker '962 or Klammer '080 references with Osborn '637 in the manner proposed by the Examiner. The references are directed toward solving different problems. Osborn '637 teaches ribs used for reinforcement on an adapter that is flexible and adjustable due to a number of vertical slots included therein. The ribs provide some resiliency to the adapter but do not function to align the adapter within a support. One looking to improve the devices of Wakefield '565 or Klammer '080 by making them alignable would not look to the teaching of Osborn '637 which is not concerned with alignment. Peiker '962 is not concerned with multiple element alignment, as only a single element is disclosed in the patented design. The present application provides the only motivation for the combination. Reconsideration and withdrawal of the rejection of claims 5-6 is respectfully requested.

Claims 7-8 and 14 stand rejected under 35 USC 103(a) as being unpatentable over the combination of Wakefield '565 in view of U.S. Patent 5,556,017 to Troy (hereinafter Troy '017). For the following reasons, the Examiner's rejections are traversed.

With regard to claim 7, there is no motivation or suggestion in the art of record to

combine the references in the manner proposed by the Examiner. The Examiner states that it would have been obvious to add a pivotal panel, as shown in Troy '017, to the device of Wakefield '565. Applicant respectfully does not see how this can be done. Wakefield '565 teaches a holder that fits into an existing vehicle beverage holder. It is put in place when needed and removed when the beverage holder is used for its original purposes. If the holder is attached to a pivoting panel, it would no longer be fit into beverage holder, but rather pivoted into a storage bin as shown in Troy '017 or a similar structure. Simply put, Wakefield '565 does not suggest making such a modification and in fact teaches away from such a change.

Troy '017 discloses a hinged phone bracket for a vehicle. A phone is attached to the bracket and can be moved in or out of a storage bin depending on which direction the bracket is swung. When fully open, the phone bracket has an obtuse angle with respect to the bottom of the bin and when fully closed, the phone bracket is angled at about 45 degrees from the bottom of the bin.

Even if the references were combined in the manner proposed by the Examiner, the present invention of claim 7 would not result. As previously stated, Wakefield '565 does not disclose outer and inner members adapted to receive phones of different sizes, as required. Additionally, Troy '017 does not disclose a panel that is "disposed generally vertically when said panel assembly is in a closed position" as required, but rather at an angle of about 45 degrees with respect to the bottom of the bin. Thus, the combination of Wakefield '565 and Troy '017 lacks this feature as well.

Reconsideration and withdrawal of the rejection of claim 7 is respectfully requested.

Claims 8 and 14 depend directly from claim 7, which is believed to be allowable

for the reasons stated above.

Claim 9 stands rejected under 35 USC 103(a) as being unpatentable over the combination of Wakefield '565 and Troy '017 in view of Peiker '962. For the following reasons, the Examiner's rejections are traversed.

As previously stated, there is no motivation to combine the Wakefield '565 and Troy '017 references. Additionally, as previously stated, there is no motivation to combine the Wakefield '565 and Peiker '962 references. Reconsideration and withdrawal of the rejection of claim 9 is respectfully requested.

Claims 10-11 stand rejected under 35 USC 103(a) as being unpatentable over the combination of Wakefield '565, Peiker '962 and Troy '017 in further view of Klammer '080. For the following reasons, the Examiner's rejections are traversed.

As previously stated, there is no motivation to combine the Wakefield '565 and Peiker '962 and/or Troy '017 references. Additionally, there is no motivation in the art to combine the Wakefield '565 and Klammer '080 references in the manner proposed by the Examiner.

Further, with regard to claim 11, neither reference teaches that the inner member has ears that "snap fit through openings in the outer member", as required. The ridges 64 of Wakefield '565 are not received in openings. Troy '017, Peiker '962, and Klammer '080 also do not include inner and outer members that are snappingly engaged. As will be apparent from the foregoing, the Examiner's proposed combination of references fails to disclose or suggest the features of the invention defined in claims 11. Reconsideration and withdrawal of the rejections based upon the combination of Wakefield '565, Troy '017, Peiker '962 and Klammer '080 is requested.

Claims 12-13 stand rejected under 35 USC 103(a) as being unpatentable over the combination of Wakefield '565, Troy '017, Peiker '962 and Klammer '080 in further view of Osborn '637. For the following reasons, the Examiner's rejections are traversed.

It is submitted that there is no motivation or suggestion to combine the references in the manner proposed by the Examiner. The references are directed toward solving different problems. Osborn '637 teaches ribs used for reinforcement on an adapter that is flexible and adjustable due to a number of vertical slots included therein. The ribs provide some resiliency to the adapter but do not function to align the adapter within a support. One looking to improve the devices of Wakefield '565, Troy '017 or Klammer '080 by making them alignable would not look to the teaching of Osborn '637 which is not concerned with alignment. The present application provides the only motivation for the combination. Peiker '962 does not teach alignment of multiple elements.

Further, regarding claim 12, even if the references were combined in the manner proposed by the Examiner, the present invention would not result. Additional modification of the combination would be required to arrive at the claimed invention. Neither Wakefield '565, Troy '017 nor Klammer '080 disclose ribs within an inner member bottom wall and slots in an outer member bottom wall. Peiker '962 also does not disclose ribs. As stated above Osborn '637 does not disclose alignment ribs that extend into slots of an adjacent member. Instead the ribs disclosed serve a reinforcement purpose and the slots disclosed allow the section into which they are formed to be compressed as necessary. Thus, even the combination of Wakefield

'565, Troy '017, Klammer '080, Peiker '962 and Osborn '637 does not teach alignment ribs and corresponding slots as required by claim 12. Therefore, claim 12, and claim 13 which depend therefrom, are patentable over the cited references. Reconsideration and withdrawal of the rejections of claims 12-13 is requested.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 18-0160, our Order No. HRA-12807.

Respectfully submitted,

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